

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY S. HANN,

Plaintiff-Appellant,

CIVIL CASE NO. 05-71347

v.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

MARGIE R. McNUTT, et al.

Defendants-Appellees

**ORDER DENYING PLAINTIFF-APPELLANT'S MOTION TO
PROCEED IN FORMA PAUPERIS (IFP) ON APPEAL**

Appellant contends in his Motion that individual retirement accounts (“IRAs”) are not considered in determining indigence, claiming as authority *United States v. Lexin*, 434 F.Supp.2d 836 (S.D.Cal. 2006), a case determining indigence under the Criminal Justice Act, 18 U.S.C. § 3006A. Although that decision has not been overruled, this Court does not adopt it and concludes that IRA(s) should be considered in determining an individual’s request for *in forma pauperis* status.

This Court adopts the court’s reasoning in *In the Matter of the Extradition of Jayant Mukundray Patel*, No. 08-MJ-430, 2008 WL 896069 (D.Or. March 29, 2008). In *Patel*, the court concluded that Dr. Patel did not qualify for appointed counsel under the Criminal Justice Act, 18 U.S.C. § 3006A, because he had significant assets in his IRA.

This Court agrees with the *Patel* court’s discussion of *Lexin*:

I do not find the decision persuasive and I note it is not binding on this court. First, the *Lexin* court held that the defendants there were entitled to court-appointed counsel even considering all of

the defendants' assets, including their IRAs. . . . Thus, the court's holding that the IRAs should not be considered is properly treated as *dicta* in regard to any decision on the actual appointment of counsel.

Patel, 2008 WL 896069 at *2. This Court concludes that certainly in this civil matter seeking *in forma pauperis* status on appeal, Petitioner's IRA account(s) must be divulged to the Court.

Insofar as Petitioner has refused to divulge this information, this Court denies his Motion to Proceed In Forma Pauperis on Appeal.

SO ORDERED.

S/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: November 16, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on November 16, 2010.

S/Denise Goodine
Case Manager